IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Bail Appl..No. 4107 of 2007()

CRIME NO.152/07 OF KUMILY POLICE STATION
CRMP.2275/2007 of DISTRICT COURT, THODUPUZHA

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PETITIONERS/A1 TO 3

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1. SASI,S/O.RAMAN,MADHAVANKANAM COLONY,
MADHAVANKANAM KARA,ANAVILASAM VILLAGE,IDUKKI DIST.

2. RAJA,S/O.PERUMAL,MADHAVANKANAM COLONY,
MADHAVANKANAM KARA,ANAVILASAM VILLAGE,IDUKKI DIST.

3. KANNAN,S/O.PERUMAL,MADHAVANKANAM COLONY,
MADHAVANKANAM KARA,ANAVILASAM VILLAGE,
IDUKKI DISTRICT.

BY ADV. SRI.K.BALACHANDRAN (MANGALATH)
SRI.RAJESH NAIR

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4107 of 2007

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Dated this the 13th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 to 3. Altogether there are three accused persons. They face allegations under Section 326 r/w. 34 I.P.C. There are allegations and counter allegations raised. Case and counter case have been registered. On 4.5.2007 at a tea shop two groups did allegedly clash resulting in grievous injury to the victim. The petitioners are alleged to have acted in furtherance of their common intention on account of political animosity. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are innocent. They are really the victims of aggression. They are likely to lose their jobs if they were arrested and remanded to custody. In these circumstance discretion under Section 438 Cr.P.C. may be invoked in their favour, submits the counsel.

3. The application is opposed. Allegations are serious. There are no circumstances justifying the invocation of the discretion under Section 438 Cr.P.C., submits the Prosecutor.

4. Having considered all the relevant inputs, I find merit in the submissions of the learned Prosecutor. The extra ordinary equitable discretion under Section 438 Cr.P.C. is to be invoked sparingly and in exceptional cases, that too, in aid of justice. Even the fact that an accused person, if he were arrested, would have been granted regular bail is no reason for the court to invoke such extra ordinary equitable discretion. Is there misuse or abuse of the powers of arrest? These are the crucial considerations when the court considers the application for grant of anticipatory bail. I am unable to agree that this is a fit case where such extra ordinary equitable discretion can or deserves to be invoked. This, I am satisfied, is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is hence dismissed. Needless to say, if the petitioners surrender before the Investigating Officer or the learned Magistrate having jurisdiction and apply for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned

Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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